

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VACAVILLE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015090255

ORDER VACATING ORDER TO
SHOW CAUSE AND DENYING JOINT
REQUEST FOR SECOND
CONTINUANCE OF PHC

A prehearing conference was set in this matter for November 30, 2015, at 10:00 a.m. The undersigned Administrative Law Judge attempted to convene the telephonic prehearing conference at the date and time set for the PHC. Patti Schiffner, assistant to Tania Whiteleather, attorney for Student, informed the ALJ that Ms. Whiteleather would not be appearing for the PHC because she was appearing in federal court at that time and was appearing before the Office of Administrative Hearings for a due process hearing later that day. No written request for continuance was filed by Ms. Whiteleather prior to the time set for the PHC, and no order continuing the PHC had been issued by OAH. The PHC was convened with Melissa Phung, Attorney at Law, appearing on behalf of the District.

On November 30, 2015, the Office of Administrative Hearings issued an order to show cause for Ms. Whiteleather to establish why this matter should not be dismissed for failure to participate, prosecute or advance the case for hearing and why she should not be ordered to pay expenses associated with the PHC convened on November 30, 2015. Ms. Whiteleather filed a timely written response with declaration under penalty of perjury on December 1, 2015. The response and declaration explain that Ms. Whiteleather was to appear on a pending motion in federal court on another case on the same date and at the same time as the PHC set in this matter. Ms. Whiteleather assumed that the federal judge would take the matter under submission and vacate the hearing, which he had done on prior occasions. Ms. Whiteleather learned “just before Thanksgiving” that the federal matter had not been taken under submission and the hearing had not been vacated. There was some discussion between counsel about a stipulation to change the PHC date; however, the written stipulation signed by both parties was not filed with OAH until December 1, 2015 — the day after the PHC was to be convened. OAH did not receive a response from Vacaville Unified School District on the OSC.

An ALJ has the ability, and the responsibility, to control due process proceedings under the Individuals with Disabilities Education Act similar to those in a civil or criminal action before other tribunals. OAH’s policies regarding notification of settlements and

requests for continuances, as well as the obligation of counsel to appear for all calendared matters is well known to Ms. Whiteleather, as she has practiced before OAH for some time. These procedures are in place to ensure that cases are timely calendared and continuances are properly granted, so OAH can ensure cases are processed in a timely manner. The procedures are designed to protect the rights of both Student and Vacaville. When the procedures are not followed, the impact upon OAH and the parties' rights can be significant. This matter resulted in wasted time and resources not only for this tribunal but for Vacaville as well. OAH and Vacaville incurred costs associated with preparing for, and participating in, the PHC. In addition, OAH incurred costs associated with issuing orders relating to Ms. Whiteleather's non-appearance at the PHC.

Once Ms. Whiteleather was aware that she was to appear in two separate tribunals on the same date and at the same time, and was not planning to appear for the PHC before OAH, she was required to file a written motion for continuance supported by a showing of good cause, which is required after the parties' initial request for continuance has been granted.¹ An oral stipulation between the parties for a second continuance of the PHC was not sufficient to change the date of the PHC. Likewise, an oral request for a continuance by Ms. Whiteleather's assistant was also insufficient to change the date of the PHC. As attorney of record for Student, Ms. Whiteleather was obligated to appear at the PHC absent an OAH order granting her request for continuance.

Such conduct will not be permitted in the future. Ms. Whiteleather is hereby on notice that if such conduct occurs again, OAH may entertain imposing sanctions against her. The OSC is vacated. All pending dates remain on calendar. The parties' request to continue the PHC pursuant to written stipulation filed on December 1, 2015 is denied as moot, as the PHC has already been continued to December 4, 2015, per the order following prehearing conference, dated November 30, 2015.

IT IS SO ORDERED.

DATE: December 2, 2015

/s/

DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings

¹ On September 11, 2015, the parties filed a joint request for continuance of the previously set mediation, PHC, and hearing dates. The parties' request was granted on September 15, 2015.